

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

EARNEST PETERSON, )  
vs. )  
Appellant, )  
vs. )  
LAWRENCE E. WILSON, Warden, )  
California State Prison, )  
San Quentin, California, )  
Appellee. )  
\_\_\_\_\_

No. 21193

APPELLEE'S BRIEF

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APPELLEE'S BRIEF

JURISDICTION

The jurisdiction of the United States District Court for the Northern District of California, Southern Division, to entertain appellant's application for a writ of habeas corpus was conferred by Title 28, United States Code section 2241. The jurisdiction of this court is conferred by Title 28, United States Code section 2253. Proceedings in forma pauperis are authorized by Title 28, United States Code section 1915.

STATEMENT OF THE CASE

A. Proceedings in the State Court

In December, 1961, appellant was convicted in the Superior Court of Los Angeles County upon his plea of guilty to a charge of violation of California Penal Code section



187 (murder); and he was subsequently sentenced to life imprisonment. Appellant did not appeal from the judgment of conviction (TR 2).<sup>1/</sup>

Application for writs of habeas corpus to the Superior Court of Marin County and the California Supreme Court were denied on March 24, 1966, and May 6, 1966, respectively (TR 5, 6).

#### B. Proceedings in the Federal Courts

Appellant filed a petition in forma pauperis for a writ of habeas corpus in the District Court on June 9, 1966 (TR 1, 8). On the same date, the petition was denied (TR 23-25). On July 1, 1966, Judge Wollenberg granted appellant's application for a certificate of probable cause and for leave to appeal in forma pauperis (TR 26).

#### STATEMENT OF THE FACTS

The petition filed in the District Court contained the following allegations. On or about January 3, 1961, appellant was arrested on suspicion of robbery (TR 12). Upon arraignment he entered a plea of not guilty and counsel was appointed before the preliminary hearing to represent him on the charge of robbery (TR 13).

Some time subsequent to that preliminary hearing,

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1. "TR" refers to the transcript of record of the proceedings in the District Court.



the appellant, during interrogation by the police, confirmed that a codefendant was correct when he said that a pistol had been obtained from Peter Burns (TR 16). Thereafter, the appellant was charged with suspicion of murder and the robbery charges were dismissed (TR 16). Appointment of counsel for appellant was made at the completion of the preliminary hearing conducted on the charge of murder and appellant was subsequently visited in jail from time to time by counsel (TR 17). Approximately one month before trial counsel advised appellant to plead guilty as it was likely that he might receive a death sentence. In December, 1961, appellant entered a plea of guilty of murder in the first degree; and, as a result, he was convicted and sentenced to life imprisonment in the California State Prison at San Quentin (TR 17).

#### APPELLANT'S CONTENTIONS

1. The District Court erred in holding that appellant could not raise the issues pertaining to the proceedings, interrogations, etc., in his case before entry of his plea of guilty.

2. The District Court erred in not holding a hearing on appellant's allegations that his guilty plea was coerced.

3.



SUMMARY OF APPELLEE'S ARGUMENT

I. Issues pertaining to evidence obtained through interrogation prior to entry of appellant's plea of guilty may not be raised as grounds for relief by habeas corpus proceedings.

II. The petition stated no basis in fact for finding that appellant's plea of guilty was coerced or that counsel was incompetent.

III. The district court was not required to hold a hearing.

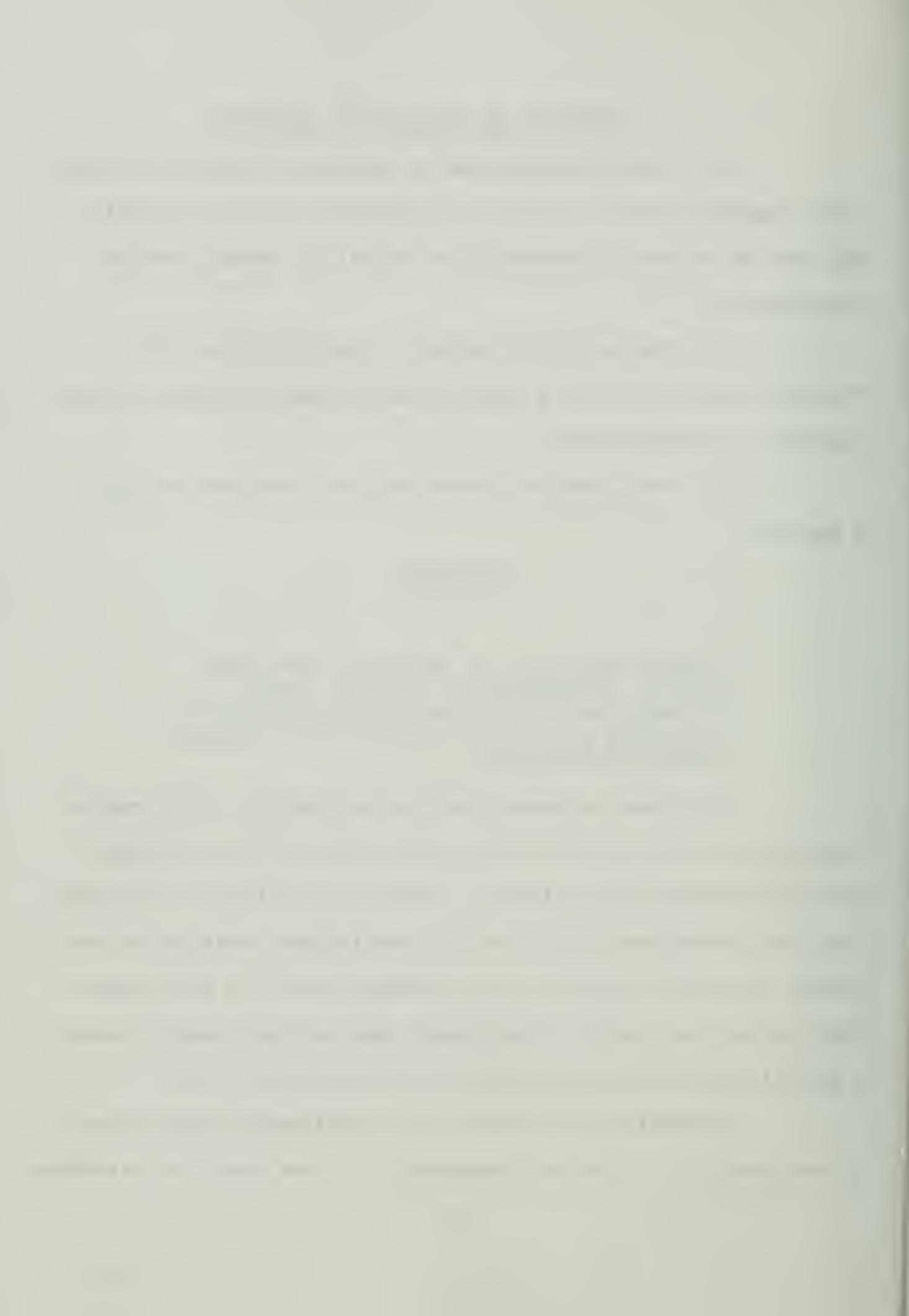
ARGUMENT

I

ISSUES PERTAINING TO EVIDENCE OBTAINED  
THROUGH INTERROGATION PRIOR TO ENTRY  
OF APPELLANT'S PLEA OF GUILTY MAY NOT  
BE RAISED AS GROUNDS FOR RELIEF BY HABEAS  
CORPUS PROCEEDINGS.

Appellant alleges that he was denied legal representation by the police during interrogation in violation of his constitutional rights. The facts indicate that appellant was questioned prior to the preliminary hearing on the charge of murder and the only statement made by him during that period was that a codefendant was correct when he said a pistol had been secured from Peter Burns (TR 16).

Regardless of whether that statement constituted a "confession," it is not necessary for the court to determine



counsel. The statement was not used to convict him; his conviction was based upon his plea of guilty. Petitioner's initial plea, closest in time to the statement, was one of not guilty; and there is no evidence that the change of plea was motivated in any way by the statement. In re Seiterle, 61 Cal.2d 651 (1964).

As a result, appellant's conviction rests solely upon his plea of guilty, entered in open court in December, 1961, pursuant to advice of counsel (TR 17) and not upon the alleged illegally obtained evidence. Wallace v. Heinze, 351 F.2d 39 (9th Cir. 1965); Townsend v. Burke, 334 U.S. 736 (1948); Davis v. United States, 347 F.2d 374 (9th Cir. 1965); Harris v. United States, 338 F.2d 75 (9th Cir. 1964). The conviction and sentence which follow a plea of guilty are based solely and entirely upon said plea and not upon any evidence which may have been improperly acquired by the prosecuting authorities. Thomas v. United States, 290 F.2d 696 (9th Cir. 1961).

Therefore, the District Court did not err in holding that appellant could not make evidence obtained through interrogation prior to entry of his plea of guilty a basis for relief by habeas corpus proceedings.



II

THE PETITION STATED NO BASIS IN FACT FOR FINDING THAT APPELLANT'S PLEA OF GUILTY WAS COERCED OR THAT COUNSEL WAS INCOMPETENT.

The appellant's further allegation that his attorney urged him to plead guilty raises no question as to coercion. There is no foundation in fact in this petition to establish *prima facie* that the plea of guilty was coerced.

Appellant makes no allegation that the court or prosecutor promised him leniency for pleading guilty to the charge of murder; rather, it appears to have been an intelligent decision by appellant based on the advice of his own counsel who considered the possibility of a death sentence if the case went to trial. In Application of Atchley, 169 F.Supp. 313 (D.C.N.D. Cal. 1958), it was held that even if the public defender had advised a state prisoner to change his plea in the state court prosecution and had informed the prisoner that if this were done he would receive a lighter sentence, such facts would not indicate coercion in the constitutional sense which would entitle the prisoner to release under a writ of habeas corpus in a federal proceeding. See also Cortez v. United States, 337 F.2d 699 (1964).

In a habeas corpus proceeding by a state prisoner on the grounds of inadequate representation by the public defender in a state prosecution, the presumption is that



competent counsel was appointed for the prisoner. Application of Atchley, supra. And where a plea of guilty is entered upon the advice of counsel, as here, the allegation of ineffective assistance of counsel must be of such kind as to shock the conscience of the court and make the proceedings a farce and a mockery of justice. Smith v. United States, 324 F.2d 436, 439-440 (D.C. Cir. 1963). The language of Smith v. United States, 304 F.2d 403, 404 (D.C. Cir. 1962), seems appropriate:

"This case presents another example of able counsel being vilified and maligned after rendering as effective service as could be rendered in the circumstances of this case."

Appellant's argument concerning competency of counsel appears to be keyed to an alleged lack of evidence to support his guilt; however, he himself states that he was implicated in the murder by the confession of a codefendant (TR 17). Appellant relies on People v. Aranda, 63 Cal.2d 518, 530 (1965) which is not applicable here since it concerns, inter alia, a defendant who denied his guilt and never entered a plea of guilty.

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7.



### III

#### THE DISTRICT COURT DID NOT ERR IN DENYING APPELLANT'S PETITION WITHOUT A HEARING

The appellant contends that the district court erred in its denial of his petition due to the fact that no hearing of the matter was ordered, thus denying him the opportunity to obtain the testimony of persons directly involved in the circumstances surrounding his plea of guilty.

The district court found that, "petitioner wishes the court to indulge in probabilities, not in actualities. Mere speculations form an insufficient basis upon which this court may act. Wilson v. Harris, 351 F.2d 840 (9th Cir. 1965)." (TR 24).

A federal district judge may dismiss a habeas corpus petition of a state prisoner without a hearing when, as a matter of law, the facts alleged in the petition do not constitute grounds for relief. Schlette v. People of the State of California, 284 F.2d 827, 834 (9th Cir. 1960). See also Blair v. People of the State of California, 340 F.2d 741 (9th Cir. 1965) and Townsend v. Sain, 372 U.S. 293 (1963). Even though the circumstances as stated by appellant concerning his plea of guilty may be correct, he has failed to state a legal ground for relief by habeas corpus proceedings.



CONCLUSION

For the foregoing reasons, it is respectfully submitted that the order of the district court denying the petition for writ of habeas corpus should be affirmed.

DATED: November 10, 1966

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CERTIFICATE OF COUNSEL

I certify that in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit and that, in my opinion, this brief is in full compliance with these rules.

DATED: November 10, 1966

Joyce F. Nedde  
JOYCE F. NEDDE (Mrs.)  
Deputy Attorney General of  
the State of California

